

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

WHOOPS TRANSPORT, INC.,

Plaintiff

v.

BLUE RIBBON COMMODITY
TRADERS, INC.,

Defendant

v.

CIVIL 07-2033 (GAG)

JOSÉ RAMOS ORTIZ, individually and
d/b/a FRIGORÍFICO RAFO'S and/or
RAFO'S SEA FOOD and/or RAFO'S
SEA FOOD DISTRIBUTOR;
PROGRESO CASH & CARRY;
COOPERATIVA DE ISABELA; ALL
PACKING PRODUCTS & EXPORT;
CORP.; QUALITY FOODS
DISTRIBUTORS; and SUPER-
MERCADOS MR. SPECIAL, INC.,

Garnishees

O R D E R

This matter comes before the court on The Bancorp Bank's ("Bancorp")
"Motion for Limited and Restricted Intervention Pursuant to Rule E(8) of the
Supplemental Rules for Certain Admiralty and Maritime Claims." (Docket No. 59,
May 8, 2008.) Bancorp requests that it be authorized to specially appear in this
case to defend and protect its security interest in the collateral garnished in this
present action. (*Id.* at 6.) On May 21, 2008, plaintiff Whoops Transport, Inc.

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3 ("Whoops") filed its response to Bancorp's motion for intervention. (Docket No.
4 66.)
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6 In August of 2005 Bancorp and defendant Blue Ribbon Commodity Traders,
7 Inc. ("Blue Ribbon") entered into a loan agreement whereby Bancorp provided
8 Blue Ribbon with two separate credit lines and Blue Ribbon executed credit notes
9 in favor of Bancorp. Additionally, the parties entered into a security agreement
10 giving Bancorp a first priority security interest over "among other collateral, all
11 accounts receivable owned by Blue Ribbon." (Docket No. 59, at 3, ¶ 10.)
12 Furthermore, Bancorp filed a financial statement concerning the security interest
13 in compliance with the requirements of the Uniform Commercial Code of
14 Pennsylvania. That statement was filed with the Secretary of the Commonwealth
15 of Pennsylvania. (Id. ¶ 12.) Bancorp has provided copies of relevant documents
16 as exhibits accompanying its motion. (Docket No. 59.)
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19 Blue Ribbon defaulted on the loan. (Id. at 4.) Accordingly, Bancorp
20 demanded payment of the balance due under the loan and that Blue Ribbon
21 immediately turn over the collateral to Bancorp, including all accounts receivable.
22 (Id.)
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24 In the original complaint, Whoops alleged that Blue Ribbon breached a
25 contract by non-payment for transportation of several shipments of refrigerated
26 cargo. (Docket No. 1.) Whoops caused pre-judgment writs of garnishment to be
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issued as to certain of Blue Ribbon's customers. (Docket No. 9.) Bancorp alleges that, as a result of the garnishments, some of the garnishees have paid portions of Bancorp's collateral into the court. (Docket No. 59, at 5, ¶ 22.) In addition to its motion to intervene in this action, Bancorp has also filed an action against Whoops alleging conversion and contractual interference in the United States District Court for the Eastern District of Pennsylvania. (Docket No. 59, at 6, ¶ 26.)

In relevant part, Rule 24 of the Federal Rules of Civil Procedure provides that a party will be permitted to intervene if it is claiming an "interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest. . . ." Fed. R. Civ. P. 24(a)(2). Bancorp is claiming an interest in the garnished property at the center of the action, and the disposition of the action could certainly impair or impede Bancorp's ability to protect its interest in the property.

Whoops does not disagree, and "finds no reason to oppose Bancorp's request to intervene in the instant case in order to defend its interests." (Docket No. 66, at 6.) However, Whoops takes issue with Bancorp's action against it in the Eastern District of Pennsylvania, and its potential for conflicting determinations. (*Id.* at 3-7.) Whoops requests that Bancorp only be allowed to

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4 intervene in this action if "Bancorp files proof that it has requested the voluntary
5 dismissal with prejudice" of the other action. (Id. at 7.)

6 To avoid potential conflicting determinations, Whoops suggests invoking the
7 so-called "first-to-file rule," to have either the Pennsylvania claim dismissed, or
8 for this court to enjoin the prosecution of cases similar to the present action in
9 different federal district courts. (Id. at 4-5.) The first-to-file rule may be
10 implemented when "identical actions are proceeding concurrently in two federal
11 courts, entailing duplicative litigation and a waste of judicial resources;" if this is
12 the case, "the first filed action is generally preferred in a choice-of-venue
13 decision." Cianbro Corp. v. Curran-Lavoie, Inc., 814 F.2d 7, 11 (1st Cir. 1987)
14 (citing Codex Corp. v. Milgo Elec. Corp., 553 F.2d 735, 737 (1st Cir. 1977)).
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16 The first-to-file rule is discretionary in nature, Small v. Wageman, 291 F.2d
17 734, 736 (1st Cir. 1961), as Whoops itself points out. (Docket No. 66, at 5.)
18 Being that the two actions in question are not identical, I see no compelling
19 reason to enjoin Bancorp from pursuing litigation against Whoops in Pennsylvania,
20 nor to require Bancorp to voluntarily dismiss the action.
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23 In view of the above, Bancorp's motion to intervene is GRANTED.

24 At San Juan, Puerto Rico, this 6th day of June, 2008.
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26 S/ JUSTO ARENAS
27 Chief United States Magistrate Judge
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